UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte VINAY V. SHAH,
IAN D. JUDD, and
REGINALD BEER

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Appeal No. 96-1115
Application 07/917,098[1]

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ON BRIEF
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Before THOMAS, JERRY SMITH, and CARMICHAEL, Administrative
Patent Judges.

THOMAS, Administrative Patent Judge.

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[1]   Application for patent filed September 25, 1992.

1

Appeal No. 96-1115
Application 07/917,098

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's

final rejection of claims 1 to 12, which constitute all the

claims in the application.

Representative claim 1 is reproduced below:

1. A method of communicating between first and second
nodes connected by a serial link, the method comprising the
steps of:

transmitting data between said nodes in the form of
packets, each packet comprising a plurality of predefined
fields, each field consisting of one or more multibit data
frames; and

controlling the flow of the data packets by means of
multiple bit control frames having the same bit length as the
data frames and being distinguishable from the data frames,
the control frames being transmissible independently of the
data packets.

The following references are relied by the examiner:

| Tooley et al. (Tooley) | 3,979,719 | Sep. 7, 1976 |
| Thorne | 5,027,349 | Jun. 25, 1991 |

Claims 1 to 12 stand rejected under 35 U.S.C. § 103. As

evidence of obviousness, the examiner relies upon Tooley in

view of Thorne. Rather than repeat the positions of the

appellants and the examiner, reference is made to the brief

and the answer for the respective details thereof.

OPINION

We reverse the above rejection of claims 1 to 12 under

35 U.S.C. § 103.

For various reasons, the examiner has not set forth a

prima facie case of obviousness within 35 U.S.C. § 103. From

an artisan's perspective, we do not see any reason why the

artisan would have found it desirable within 35 U.S.C. § 103

to have modified the rather rigid control block data structure

of Tooley's communication protocol in light of the teachings

of Thorne, even assuming that it is correct as the examiner

says that Thorne teaches that control data may contain several

fields as needed or based on a design choice of a specific

application. We are not persuaded that the artisan would have

found it obvious to have modified the data structure control

fields in Tooley's data or text blocks in light of such

teachings such as to make the control fields of equal length

as data frames as argued by the examiner. The mere fact that

Thorne may teach that control fields may be of variable length

as needed does not necessarily argue or teach the desirability

of modifying another data structure. Essentially, there is no

other reason advocated by the examiner to modify Tooley and we

are aware of none.

We are also persuaded by appellants' argument at the

bottom of page 6 and at the bottom of page 7 of the brief that

independent claims 1 and 9 patentably distinguish over the

teachings and showings in Tooley because the claimed control

frames rather than an entire control block or packet as taught

by Tooley and by the Tooley-Thorne combination are utilized to

control the flow of data packets. At page 4 of the answer the

examiner analogizes the data or text blocks of Tooley to the

claimed data packets. In one sense then it does take within

Tooley's teachings an entire data block length in the form of

a response message format to transmit a response message

comprising an ACK or a NAK or a RSP message. Tooley does not

teach that a lesser number of bits or identifiable groups of

bits within any of his blocks may be construed as a control

"frame" having the same bit length as a data or text portion

Appeal No. 96-1115
Application 07/917,098

of an entire block. Only entire "blocks" of data are

transmitted in Tooley and not a lesser number of or portions

of any given "block" defined as a subportion of a block are

transmitted as a control portion or "frame" as claimed. Thus,

it is also apparent that an additional feature of independent

claims 1 and 9 is not met by Tooley in that the portions of an

identified group of named bits of a block in Tooley are not

transmitted independently of any block or packet in this

reference. The examiner's brief reference to column 1, lines

35 to 53 as to this feature is not persuasive as to this

limitation of independent claims 1 and 9 on appeal.

The examiner's attempt to analogize the data blocks of

Tooley to the claimed data packets therefore fails. Thorne

does not cure this deficiency. The subtle nuances of data

structures for communication protocols cannot be ignored. In

view of the foregoing, therefore, we cannot sustain the

rejection of independent claims 1 and 9 on appeal. As such,

the rejection of their respective dependent claims must also

be reversed. The decision of the examiner rejecting claims 1

to 12 under 35 U.S.C. § 103 is reversed.

5

Appeal No. 96-1115
Application 07/917,098

<u>REVERSED</u>

JAMES D. THOMAS   )
Administrative Patent Judge   )
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)   BOARD OF
PATENT
JERRY SMITH   )   APPEALS AND
Administrative Patent Judge   )
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